

jurisdiction.

- 23.7. Remedies. Except for Disputes regarding confidentiality arising under Section 16 of this Agreement, the procedures specified in this Section 23 shall be the sole and exclusive procedures for the resolution of Disputes between the Parties arising out of or relating to this Agreement; provided, however, that a Party may file a judicial claim or action on issues of statute of limitations or repose or to seek injunctive relief, sequestration, garnishment, attachment, or an appointment of a receiver, subject to and in accordance with the provisions of Section 26.5 (Venue/Consent to Jurisdiction). Preservation of these remedies does not limit the power of the arbitrator(s) to grant similar remedies, and despite such actions, the Parties shall continue to participate in and be bound by the dispute resolution procedures specified in Section 23.
- 23.8. Settlement Discussions. All negotiations and discussion concerning Disputes between the Parties pursuant to Section 23 of this Agreement are to be deemed confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and settlement privilege. No statement of position or offers of settlement made in the course of the dispute resolution process can be or will be offered into evidence for any purpose, nor will any such statements or offers of settlement be used in any manner against any Party. Further, no statement of position or offers of settlement will constitute an admission or waiver of rights by either Party. At the request of either Party, any such statements or offers, and all copies thereof, shall be promptly returned to the Party providing the same.
- 23.9. Survival. This Section 23 will survive any expiration or termination of this Agreement.

**24. Assignment**

- 24.1. Limitation. Except as set forth below in Section 24.2 with respect to pledging as collateral security, Seller shall not assign or encumber (collectively, the “Assignment”) this Agreement, any rights or obligations under the Agreement, or any portion hereunder, without Buyer’s prior written consent. Seller shall give Buyer at least thirty (30) days prior written notice of any requested Assignment. Subject to Seller providing Buyer with information demonstrating to Buyer, in Buyer’s Commercially Reasonable Discretion, that Seller’s proposed assignee has the technical, engineering, financial, and operational capabilities to perform under this Agreement, Buyer may not unreasonably withhold its consent; *provided, however*, that any such assignee shall agree in writing to be bound by the terms and conditions hereof and shall deliver to Buyer Performance Assurance in the amount required under this Agreement, and such enforceability assurance as the Buyer may request in its sole Commercially Reasonable discretion. Notwithstanding anything to the contrary herein, Buyer may pledge, encumber, or assign this Agreement without the consent of Seller to any Person that is Creditworthy, or that has provided Seller with a guaranty substantially in the form of Exhibit 6 from a Creditworthy credit support provider guaranteeing the assignee’s obligations hereunder, and that has agreed in writing to assume the obligations of Buyer hereunder.
- 24.2. Pledge. Seller may, without prior consent of Buyer but with no less than ten (10) Business Days prior written notice to Buyer, pledge as collateral security this Agreement to a financing party in connection with any loan, lease, or other debt or equity financing arrangement for the Facility. Any pledge of this Agreement as collateral security will not relieve Seller of any obligation or liability under this Agreement or compromise, modify or affect any rights, benefits or risks of Buyer under this Agreement.
- 24.3. Acknowledgement of Non-Default. Provided that Seller is not in default of its obligations under this Agreement, upon reasonable request by Seller, Buyer will execute a written

acknowledgement of non-default in the form of Exhibit 8 attached hereto (the “Acknowledgement”) which shall be based on the actual knowledge of Buyer’s personnel responsible for administering the Agreement at the time of the execution of the Acknowledgement and after due inquiry of Buyer’s internal records only. Notwithstanding any provision to the contrary set forth in the Acknowledgment, Buyer reserves all rights and defenses available to it under the Agreement, and nothing stated therein shall be deemed to have waived, amended or modified any such rights or defenses. In no event shall the issuance of any Acknowledgement introduce any third party to this Agreement or create any rights, including third party beneficiary rights for any Person under this Agreement.

- 24.4. Change of Control. Any Change of Control of Seller (however this Change of Control occurs) shall require the prior written consent of Buyer, which shall not be unreasonably withheld or delayed. Seller shall give Buyer at least thirty (30) days prior written notice of any such requested consent to a Change of Control.
- 24.5. Delivery of Assurances & Voidable. Any Assignment or Change of Control will not relieve Seller of its obligations hereunder, unless Buyer agrees in writing in advance to waive the Seller’s continuing obligations under this Agreement. In case of a permitted Assignment, such requesting party or parties shall agree in writing to assume all obligations of Seller and to be bound by the terms and conditions of this Agreement and shall deliver to Buyer such tax, credit, performance, and enforceability assurances as Buyer may request, in its Commercially Reasonable discretion. Further, Buyer’s consent to any Assignment may be conditioned on and subject to Seller’s proposed assignee having first obtained all approvals that may be required by any Requirements of Law and from all applicable Governmental Authorities. Any sale, transfer, Change of Control, and/or Assignment of any interest in the Facility or in the Agreement made without fully satisfying the requirements of this Agreement shall be null and void and will be an Event of Default hereunder with Seller as the Defaulting Party.
- 24.6. Cost Recovery. Without limiting Buyer’s rights under this Section 24, to the extent Buyer agrees to a request from Seller for one or more consent(s) to an Assignment or Change of Control under this Agreement, Seller shall pay Buyer ten thousand dollars (\$10,000) prior to Buyer processing Seller’s request.

25. **Notices**.

- 25.1. Process. All notices, requests, or invoices shall be in writing and shall be sent to the address of the applicable Party as specified on the first page of this Agreement. A Party may change its information for receiving notices by sending written notice to the other Party. Notices shall be delivered by hand, certified mail (postage prepaid and return receipt requested), or sent by overnight mail or courier. This section shall be applicable whenever words such as “notify,” “submit,” “give,” or similar language are used in the context of giving notice to a Party.
- 25.2. Receipt of Notices. Hand delivered notices shall be deemed delivered by the close of the Business Day on which it was hand delivered. Notices provided by certified mail (postage prepaid and return receipt requested), mail delivery or courier service, or by overnight mail or courier service will be deemed received on the date of delivery recorded by the delivery service or on the tracking receipt, as applicable. Notwithstanding anything to the contrary, if the day on which any notice is delivered or received is not a Business Day or is after 5:00 p.m. EPT on a Business Day, then it shall be deemed to have been received on the next following Business Day.

26. **Miscellaneous**.



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- 26.1. Costs. Each Party shall be responsible for its own costs and fees associated with negotiating or disputing or taking any other action with respect to this Agreement, including, without limitation, attorney costs, except that the cost of the arbitrator(s) will be allocated equally between the Parties as provided in Section 23.
- 26.2. Access. Upon reasonable prior notice, Seller shall provide to Buyer and its authorized agents (including contractors and sub-contractors), employees, auditors, and inspectors reasonable access to the Facility to: (i) tour or otherwise view the Facility; (ii) ascertain the status of the Facility with respect to construction, start-up and testing, or any other obligation of Seller under this Agreement; and, (iii) read meters and perform all inspections, maintenance, service, and operational reviews as may be appropriate to facilitate the performance of this Agreement or to otherwise audit and/or verify Seller's performance under this Agreement. Upon reasonable prior notice, Seller shall provide to Buyer and its guests or customers reasonable access to the Facility to only tour or otherwise view the Facility. While at the Facility, the foregoing agents, employees, auditors, inspectors, guests, and customer shall observe such reasonable safety precautions as may be required by Seller, conduct themselves in a manner that will not interfere with the operation of the Facility, and adhere to Seller's reasonable rules and procedures applicable to Facility visitors. Seller shall have the right to have a representative of Seller present during such access.
- 26.3. Safe Harbor and Waiver of Section 366. Each Party agrees that it will not assert, and waives any right to assert, that the other Party is performing hereunder as a "utility," as such term is used in 11 U.S.C. Section 366. Further, each Party hereby waives any right to assert and agrees that it will not assert that 11 U.S.C. Section 366 applies to this Agreement or any transaction hereunder in any bankruptcy proceeding. In any such proceeding each Party further waives the right to assert and agrees that it will not assert that the other Party is a provider of last resort with respect to this Agreement or any transaction hereunder or to otherwise limit contractual rights to accelerate amounts owed, net, recoup, set-off, liquidate, and/or early terminate. Without limiting the generality of the foregoing or the binding nature of any other provision of this Agreement on permitted successors and assigns, this provision is intended to be binding upon all successors and assigns of the Parties, including, without limitation, judgment lien creditors, receivers, estates in possession, and trustees thereof.
- 26.4. Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED, AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF SOUTH CAROLINA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW, AND, IF APPLICABLE, BY THE FEDERAL LAW OF THE UNITED STATES OF AMERICA.
- 26.5. Venue/Consent to Jurisdiction. Except for Disputes that are subject to Arbitration as provided herein, any judicial action, suit, or proceedings arising out of, resulting from, or in any way relating to, this Agreement, or any alleged breach or default under the same or the warranties and representations contained in the same, shall be brought only in a state or federal court of competent jurisdiction located in Greenville County, South Carolina. The Parties hereto irrevocably consent to the jurisdiction of any federal or state court within Greenville County, South Carolina and hereby submit to venue in such courts. Without limiting the generality of the foregoing, the Parties waive and agree not to assert by way of motion, defense, or otherwise in such suit, action, or proceeding, any claim that (i) such Party is not subject to the jurisdiction of the state or federal Courts within South Carolina; or (ii) such suit, action, or proceeding is brought in an inconvenient forum; or (iii) the venue of such suit, action, or proceeding is improper. The exclusive forum for any litigation between them under this Agreement that is not subject to Arbitration shall occur in federal or state court within Greenville County, South Carolina.

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- 26.6. Limitation of Duty to Buy. If this Agreement is terminated due to a default by Seller, neither Seller, nor any affiliate and/or successor of Seller, nor any affiliate and/or successor to the Facility, including without limitation owner and/or operator of the Facility will require or seek to require Buyer to purchase any output (Energy or otherwise) from the Facility under any Requirements of Law (including without limitation PURPA) or otherwise for any period that would have been covered by the Term of this Agreement had this Agreement remained in effect at a price that exceeds the Contract Price. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, and on behalf of any successor to the Seller or successor to the Facility, hereby agrees to the terms and conditions in the above sentence, and hereby waives its right to dispute the above sentence. Seller authorizes the Buyer to record notice of the foregoing in the real estate records.
- 26.7. Entire Agreement and Amendments. This Agreement represents the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, binding documents, representations and agreements, whether written or oral. No amendment, modification, or change to this Agreement shall be enforceable unless agreed upon in a writing that is executed by the Parties.
- 26.8. Drafting. Each Party agrees that it (and/or its counsel) has completely read, fully understands, and voluntarily accepts every provision, term, and condition of this Agreement. Each Party agrees that this Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties, and no Party shall have any provision hereof construed against such Party by reason of such Party drafting, negotiating, or proposing any provision hereof, or execution of this Agreement. Each Party irrevocably waives the benefit of any rule of contract construction that disfavors the drafter of a contract or the drafter of specific language in a contract.
- 26.9. Headings. All section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.
- 26.10. Publicity.
- 26.10.1. Limitation on Seller. Seller shall not make any announcement or release any information concerning or otherwise relating to this Agreement to any member of the public, press, Person, official body, or otherwise without Buyer's prior written consent, which shall not be unreasonably withheld; provided, however, any content approved by Buyer shall be limited to the non-confidential facts of the Agreement and will not imply, directly or indirectly, any endorsement, partnership, support, or testimonial of Seller by Buyer.
- 26.10.2. Limitation on the Parties. Neither Party shall make any use of the other Party's name, logo, likeness in any publication, promotional material, news release, or similar issuance or material without the other Party's prior review, approval, and written consent. Seller agrees and acknowledges that any reference or likeness to "Duke" shall be a prohibited use of Buyer's name, logo, likeness. Seller agrees and acknowledges that any direct or indirect implication of any endorsement, partnership, support, or testimonial of Seller by Buyer is prohibited, and any such use, endorsement, partnership, support, and/or testimonial will be an Event of Default under this Agreement. Subject to the foregoing, either Party may disclose to the public general information in connection with the Party's respective business activities; *provided, however*, no such disclosure or publicity by Seller will directly or indirectly imply any endorsement, partnership, support, or testimonial of Seller by Buyer.
- 26.11. Waiver. No waiver by any Party of any of its rights with respect to the other Party or with

respect to any matter or default arising in connection with this Agreement shall be construed as a waiver of any subsequent right, matter or default whether of a like kind or different nature. Any waiver under this Agreement will be effective only if it is in writing that has been duly executed by an authorized representative of the waiving Party.


- 26.12. Partnership and Beneficiaries. Nothing contained in this Agreement shall be construed or constitute any Party as the employee, agent, partner, joint venture, or contractor of any other Party. This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and their permitted successors and assigns. No other person or entity, including, without limitation, a financing or collateral support provider, will be a direct or indirect beneficiary of or under this Agreement, and will not have any direct or indirect cause of action or claim under or in connection with this Agreement.
- 26.13. Severability. Any provision or section hereof that is declared or rendered unlawful by any applicable court of law, or deemed unlawful because of a statutory change, shall not, to the extent practicable, affect other lawful obligations under this Agreement.
- 26.14. Counterparts. This Agreement may be executed in counterparts, including facsimiles hereof, and each such executed document will be deemed to be an original document and together will complete execution and effectiveness of this Agreement.

*[Remainder of page intentionally left blank. Signature page follows.]*


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**IN WITNESS WHEREOF**, Seller and Buyer have caused this Agreement to be executed by their respective duly authorized officers as of the Effective Date.

DUKE ENERGY PROGRESS, LLC

  
BY: David Johnson (Feb 15, 2022 08:46 EST)  
NAME: David Johnson  
TITLE: Director  
DATE: Feb 15, 2022

SUNFLOWER SOLAR LLC

  
BY: Jesse Montgomery (Feb 11, 2022 14:54 EST)  
NAME: Jesse Montgomery  
TITLE: Manager  
DATE: Feb 11, 2022

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Exhibit 1

Estimated Monthly Energy Production of the Facility

<u>Month</u>	<u>Estimated Facility Energy Production (MWh)</u>
January	[REDACTED]
February	[REDACTED]
March	[REDACTED]
April	[REDACTED]
May	[REDACTED]
June	[REDACTED]
July	[REDACTED]
August	[REDACTED]
September	[REDACTED]
October	[REDACTED]
November	[REDACTED]
December	[REDACTED]
Total	[REDACTED]

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Exhibit 2  
Contract Price

CAPACITY PRICING			ENERGY PRICING								
Summer Months PM	Winter Months AM	Winter Months PM	Summer Prem Pk	Summer On-Peak	Summer Off-Peak	Winter Prem Pk	Winter On-Peak AM	Winter On-Peak PM	Winter Off-Peak	Shoulder On-Peak AM/PM	Shoulder Off-Peak
\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh
\$											

For Energy Credit purposes:

Summer months are defined as calendar months June through September, Winter months are defined as calendar months December through February, and Shoulder months are defined as March through May and October through November.

Summer on-peak hours shall be Monday through Friday from 1:00 p.m. to 4:00 p.m. and 8:00 p.m. to 9:00 p.m.

Winter on-peak hours shall be Monday through Friday with morning hours from 4:00 a.m. to 6:00 a.m. and 9:00 a.m. to 11:00 p.m., plus evening hours from 6:00 p.m. to 10:00 p.m.

Shoulder on-peak hours shall be Monday through Friday with morning hours from 5:00 a.m. to 10:00 a.m. plus evening hours from 5:00 p.m. to 11:00 p.m.

Summer premium peak hours shall be Monday through Friday from 4:00 p.m. to 8:00 p.m.

Winter premium peak hours shall be Monday through Friday from 6:00 a.m. to 9:00 a.m.

There are no premium peak hours for Shoulder months.

All other hours, plus the following holidays, shall be off-peak: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after Thanksgiving and Christmas Day.

For Capacity Credit purposes:

Capacity Credit shall only be applicable in Summer months defined as the calendar months of July and August and Winter months defined as calendar months of December through March. Summer on-peak hours shall be 4:00 p.m. to 8:00 p.m. during all Summer days. During Winter months, the morning on-peak hours shall be all Winter days from 6:00 a.m. to 9:00 a.m. and evening on-peak hours shall be all Winter days from 6:00 p.m. to 9 p.m. Capacity credits are not applicable in all other months.

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Exhibit 3

Operational Milestone Schedule

<b>Deadline</b>	<b>Performance/Result Seller Must Timely Achieve</b>
30 days after the Effective Date	Due Diligence Period Completion
<b>March 31, 2022</b>	Interconnection Agreement Executed
<b>December 1, 2022</b>	Financing Milestone Commitment
<b>December 1, 2022</b>	Final System Design under Interconnection Agreement
<b>December 1, 2022</b>	Required Permits and Approval Deadlines
<b>December 1, 2022</b>	Commencement Readiness Requirements
90 calendar days after the Interconnection Facilities and System Upgrades In-Service Date, and extended day-to-day for any delays not caused by the Seller.	Commercial Operation Date

1. **Financing Milestone Commitment.** If third party financing is being obtained by Seller to construct the Facility, Seller shall deliver to Buyer a letter of commitment for full project financing meeting all of the minimum requirements set forth below, as determined by Buyer in Buyer’s sole Commercially Reasonable discretion. Buyer has no responsibility or obligation of any kind to Seller or any other person or entity with respect to Seller in connection with Seller’s financing or the Financing Milestone Commitment.
  - 1.1. Fully-underwritten and binding (not “best efforts,” a term sheet, or some lesser commitment);
  - 1.2. In an amount that is, along with fully underwritten and committed equity, adequate funding for the construction and operation of the project.
  - 1.3. Full agreement of the lender and Seller with respect to term, interest rates, fees and other economics of the lending transaction.
  - 1.4. Lender has approved the form of the power purchase agreement, turbine/panel supply agreement, engineering procurement and construction contract and other significant project agreements, subject only to the execution and delivery of those documents, as well as the construction budget for the project, and that the lender has completed all necessary due diligence.
  - 1.5. Lender retains no further approval rights with respect to size, site or technical aspects of the project.
  - 1.6. Free of conditions to effectiveness relating to further equity commitments, the confirmation of tax attributes, the approvals of other public or private third parties or the satisfactory completion of third party reports or assessments (environmental, insurance or otherwise).
  - 1.7. Not require any bonds or performance guarantees that have not already been obtained.
  - 1.8. No general condition to financing that the lender be satisfied with the project in its discretion.

- 1.9. Fully executed by the lender and the Seller.
2. If Seller (or its Affiliate) is balance sheet financing the construction of the Facility, Seller shall satisfy this Financial Milestone Commitment by delivering to Buyer evidence of Seller's, or its Affiliate's, approval for funding in an amount adequate for the construction of the Facility
3. **Final System Design Under Interconnection Agreement.** Seller shall deliver to Buyer a copy of the design specifications delivered by Seller to the Transmission Provider as of Seller's execution of the facility study agreement with the Transmission Provider, which design specifications shall be deemed as the "final" system design for purposes of Seller's obligation to timely achieve the Commercial Operation Date set forth above in this Exhibit 3. The final design specification documents delivered by Seller shall be labeled as "**FINAL**", and shall be sealed with a South Carolina Professional Engineer for purposes of establishing the final design submitted by the Seller based on which the Transmission Provider will determine impacts to the System and construct interconnection facilities for Seller to interconnect with the System and perform under this Agreement. Seller understands that changes in system design may be deemed as material or significant design changes by the Transmission Provider, and could result in the Transmission Provider withdrawing Seller's position in the transmission queue or otherwise withdrawing Seller's transmission request, as may be determined by the Transmission Provider.
4. **Required Permits and Approval Deadlines.** Seller shall deliver to Buyer a list of required Permits and deadlines to secure each of those Permits. Seller shall identify and list all Permits customary and necessary for Seller to design, construct, test, commission, and fully operate the Facility. Seller shall also identify and list the deadline by which Seller must secure all final Permits for Seller to achieve the Commercial Operation Date set forth above in this Exhibit 3 and such final deadline shall be deemed to be a Milestone Deadline. Seller shall keep Buyer informed of its efforts to secure the Permits. For each identified Permit, Seller shall provide Buyer written notice, and any supporting documentation requested by Buyer in its Commercially Reasonable Discretion, that the identified Permits have been obtained, including, without limitation, any approvals from the local Governmental Authority approving the land use, site plan and construction of the Facility.
5. **Commencement Readiness Requirements.** Seller shall deliver to Buyer the list of major development and construction activities, together with deadlines for the commencement and successful completion of those activities for Seller to achieve the Commercial Operation Date set forth in this Exhibit 3. The list of major development and construction activities, together with commencement and completion deadlines, shall include each of the activities set forth below. Each such major development and construction activity shall be deemed to be an Operational Milestone, and the deadline by which Seller must successfully complete each such activity for Seller to achieve the Commercial Operation Date set forth in this Exhibit 3 shall be deemed to be a Milestone Deadline. For each identified activity, Seller shall provide Buyer written notice, and any supporting documentation requested by Buyer in its Commercially Reasonable Discretion, that the identified activity has been commenced and/or successfully completed.
  - 5.1. Proof of Seller's rights and interest in the site upon which the Facility is to be constructed, including the applicable sale agreement or long-term lease.
  - 5.2. Delineation of any long lead-time procurement items, including a schedule for ordering and proof of such activity.
  - 5.3. A project key milestone schedule, reflecting the critical milestone events for design and construction of the facility including the date upon which Seller shall achieve: thirty and ninety percent detailed design; site mobilization and commencement; mechanical completion; substantial completion; and final completion.



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- 5.4. Identification of Seller’s key personnel, with primary responsibility for the design and construction of the Facility and communications with Buyer.
- 5.5. Seller’s operations and maintenance plan.
- 5.6. Seller’s performance and capacity testing plan and performance guarantees, in which Seller defines the performance output requirements of the Facility and describes the procedures and timing for all testing that will be conducted to demonstrate whether the Facility meets the applicable performance requirements and conditions.

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Exhibit 4

Facility Information

1. Facility Name: **Sunflower Solar LLC**
2. Facility Address: **391 Brockington Rd. Kingstree, SC 29556.**
3. Description of Facility (include number, manufacturer and model of Facility generating units, and layout): **Sunflower Solar LLC is a 9.996 MW AC utility scale ground mounted solar project utilizing approximately 33,048 modules. It will utilize 12 skid mounted inverters which will be connected to a transformer. The Facility will interconnect to Duke Energy's distribution line.**
4. Nameplate Capacity Rating (MW): AC and DC: **9.996 MW AC** [REDACTED] **MW DC**
5. DC/AC Ratio: [REDACTED]
6. Fuel Type/Generation Type: Solar/Biomass/etc. **Solar**
7. System Operator Instruction Dispatch Control Equipment: Full automatic generation control, as applicable to the Facility.
8. Site Map (include location and layout of the Facility, equipment, and other site details): **See attached site plan (proposed, not final for construction)**
9. Delivery Point Diagram (include Delivery Point, metering, Facility substation): **See attached.**
10. Control Equipment. Subject to final approval by Buyer as of the date of final execution of the Interconnection Agreement, the following control equipment shall be installed at the Facility: A Power Plant Controller (PPC) which includes all features required to comply with this Agreement and the Interconnection Agreement, including, but not limited to, active power control (dispatch), power factor set point control, voltage schedule set point control, active power ramp rates, and frequency response control (from regulation signal sent from System Operator). Set points such as active power control, as required by this Agreement, will be made available to Buyer via a hard-wired DNP3 path at the Facility's Point of Interconnection. Remote access to the Facility's HMI (the Plant Controller Interface) will be given for control of the required variables, by the Buyer
11. [Storage Resources. Subject to final approval by Buyer as of the date of final execution of the Interconnection Agreement, the following Storage resources shall be connected to or incorporated into the Facility [identify the design and all material components of any battery storage or other energy storage device connected to or incorporated into the Facility]

UPON EXECUTION OF THE AGREEMENT TO WHICH THIS EXHIBIT IS ATTACHED, ANY MATERIAL MODIFICATION TO THE FACILITY SHALL REQUIRE BUYER'S PRIOR APPROVAL, WHICH SHALL NOT BE UNREASONABLY WITHHELD, CONDITIONED OR DELAYED, AND SHALL BE MEMORIALIZED IN WRITING IN AN AMENDMENT TO THE AGREEMENT.

SITE MAP

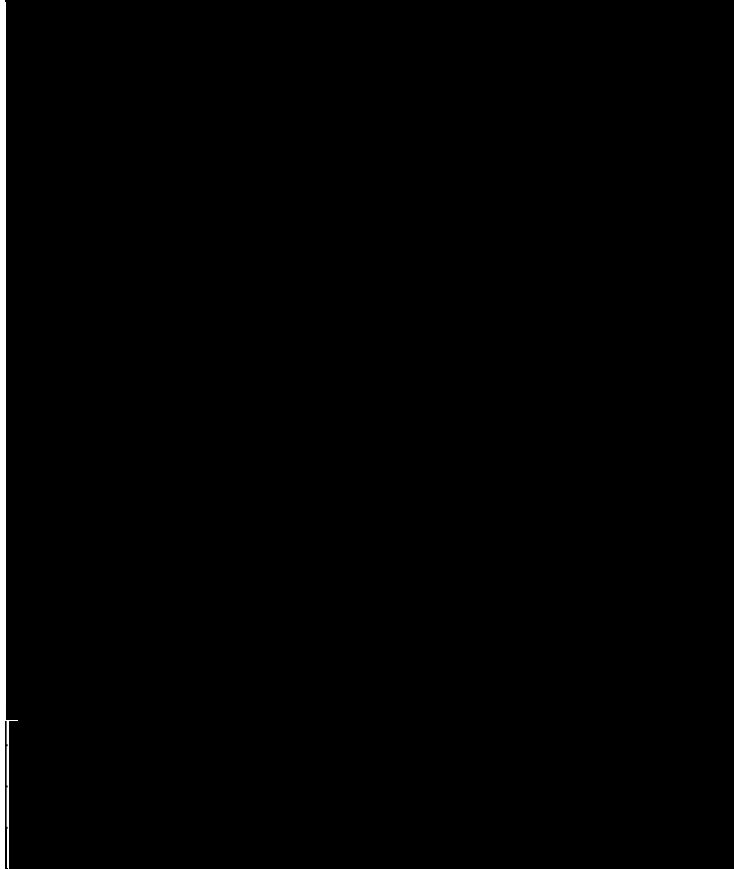


**SOLAR SHIELD  
SUN**



Exhibit 5

Expected Annual Output



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Exhibit 6  
Form of Guaranty

**THIS GUARANTY AGREEMENT** (this "Guaranty"), dated as of [date], is issued and delivered by [ **enter corporate legal name**], a [state] [form of entity] (the "Guarantor"), for the account of [ **enter corporate name**], a [state] [form of entity] (the "Obligor"), and for the benefit of [ **enter corporate name**], a [state] [form of entity] (the "Beneficiary").

**Background Statement**

WHEREAS, the Beneficiary and Obligor entered into that certain \_\_\_\_\_ dated (the "Agreement"); and

WHEREAS, Beneficiary has required that the Guarantor deliver to the Beneficiary this Guaranty as an inducement to enter into the Agreement.

**Agreement**

**NOW, THEREFORE**, in consideration of the foregoing and for good and valuable consideration, the Guarantor hereby agrees as follows:

1. Guaranty: Limitation of Liability. Subject to any rights, setoffs, counterclaims and any other defenses that the Guarantor expressly reserves to itself under this Guaranty, the Guarantor absolutely and unconditionally guarantees the timely payment of the Obligor's payment obligations under the Agreement (the "Guaranteed Obligations"); provided, however, that the Guarantor's aggregate liability hereunder shall not exceed [amount] **U. S. Dollars (U.S. [\$xx,xxx,xxx])**.

Subject to the other terms of this Guaranty, the liability of the Guarantor under this Guaranty is limited to payments expressly required to be made under the Agreement, and except as specifically provided therein, the Guarantor shall not be liable for or required to pay any consequential or indirect loss (including but not limited to loss of profits), exemplary damages, punitive damages, special damages, or any other damages or costs.

2. Effect of Amendments. The Guarantor agrees that the Beneficiary and the Obligor may modify, amend and supplement the Agreement and that the Beneficiary may delay or extend the date on which any payment must be made pursuant to the Agreement or delay or extend the date on which any act must be performed by the Obligor thereunder, all without notice to or further assent by the Guarantor, who shall remain bound by this Guaranty, notwithstanding any such act by the Beneficiary.

3. Waiver of Rights. The Guarantor expressly waives (i) protest, (ii) notice of acceptance of this Guaranty by the Beneficiary, and (iii) demand for payment of any of the Guaranteed Obligations.

4. Reservation of Defenses. Without limiting the Guarantor's own defenses and rights hereunder, the Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses that the Obligor may have to payment of all or any portion of the Guaranteed Obligations except defenses arising from the bankruptcy, insolvency, dissolution or liquidation of the Obligor and other defenses expressly waived in this Guaranty.

5. Settlements Conditional. This guaranty shall remain in full force and effect or shall be reinstated (as the case may be) if at any time any monies paid to the Beneficiary in reduction of the indebtedness of the Obligor under the

Agreement have to be repaid by the Beneficiary by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being in force, and the liability of the Guarantor under this Guaranty shall be computed as if such monies had never been paid to the Beneficiary

6. Notice. The Beneficiary will provide written notice to the Guarantor if the Obligor defaults under the Agreement.

7. Primary Liability of the Guarantor. The Guarantor agrees that the Beneficiary may enforce this Guaranty without the necessity at any time of resorting to or exhausting any other security or collateral. This is a continuing Guaranty of payment and not merely of collection.

8. Representations and Warranties. The Guarantor represents and warrants to the Beneficiary as of the date hereof that:

- a. The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guaranty and to perform the provisions of this Guaranty on its part to be performed;
- b. The execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;
- c. All consents, authorizations, approvals, registrations and declarations required for the due execution, delivery and performance of this Guaranty have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect, and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and
- d. This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against it in accordance with its terms, except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

9. Nature of Guaranty. The Guarantor hereby agrees that its obligations hereunder shall be unconditional irrespective of the impossibility or illegality of performance by the Obligor under the Agreement; the absence of any action to enforce the Agreement; any waiver or consent by Beneficiary concerning any provisions of the Agreement; the rendering of any judgment against the Obligor or any action to enforce the

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same; any failure by Beneficiary to take any steps necessary to preserve its rights to any security or collateral for the Guaranteed Obligations; the release of all or any portion of any collateral by Beneficiary; or any failure by Beneficiary to perfect or to keep perfected its security interest or lien in any portion of any collateral.

10. Subrogation. The Guarantor will not exercise any rights that it may acquire by way of subrogation until all Guaranteed Obligations shall have been paid in full. Subject to the foregoing, upon payment of all such Guaranteed Obligations, the Guarantor shall be subrogated to the rights of Beneficiary against the Obligor, and Beneficiary agrees to take at the Guarantor's expense such steps as the Guarantor may reasonably request to implement such subrogation.

11. Term of Guaranty. This Guaranty shall remain in full force and effect until the earlier of (i) such time as all the Guaranteed Obligations have been discharged, and (ii) [date] (the "Expiration Date"); provided however, the Guarantor will remain liable hereunder for Guaranteed Obligations that were outstanding prior to the Expiration Date.

12. Governing Law. This Guaranty shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to principles of conflicts of law.

13. Expenses. The Guarantor agrees to pay all reasonable out-of-pocket expenses (including the reasonable fees and expenses of the Beneficiary's counsel) relating to the enforcement of the Beneficiary's rights hereunder in the event the Guarantor disputes its obligations under this Guaranty and it is finally determined (whether through settlement, arbitration or adjudication, including the exhaustion of all permitted appeals), that the Beneficiary is entitled to receive payment of a portion of or all of such disputed amounts.

14. Waiver of Jury Trial. The Guarantor and the Beneficiary, through acceptance of this Guaranty, waive all rights to trial by jury in any action, proceeding or counterclaim arising or relating to this Guaranty.

15. Entire Agreement; Amendments. This Guaranty integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all oral negotiations and prior writings in respect to the subject matter hereof. This Guaranty may only be amended or modified by an instrument in writing signed by each of the Guarantor and the Beneficiary.

16. Headings. The headings of the various Sections of this Guaranty are for convenience of reference only and shall not modify, define or limit any of the terms or provisions hereof.

17. No Third-Party Beneficiary. This Guaranty is given by the Guarantor solely for the benefit of the Beneficiary, and is not to be relied upon by any other person or entity.

18. Assignment. Neither the Guarantor nor the Beneficiary may assign its rights or obligations under this Guaranty without the prior written consent of the other, which consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Beneficiary may assign this Guaranty, without the Guarantor's consent, provided such assignment is made to an affiliate or subsidiary of the Beneficiary

Any purported assignment in violation of this Section 18 shall be void and without effect.

19. Notices. Any communication, demand or notice to be given hereunder will be duly given when delivered in writing or sent by electronic mail to the Guarantor or to the Beneficiary, as applicable, at its address as indicated below:

If to the Guarantor, at:

**[Guarantor name]**  
[Address]  
Attention: [contact]  
Email:[email address]

With a copy to:

**[Seller name]**  
[Address]  
Attention: [contact]  
Email:[email address]

If to the Beneficiary, at:

**[Beneficiary name]**  
[Address]  
Attention: [contact]  
Email:[email address]

or such other address as the Guarantor or the Beneficiary shall from time to time specify. Notice shall be deemed given (a) when received, as evidenced by signed receipt, if sent by hand delivery, overnight courier or registered mail or (b) when received, as evidenced by email confirmation, if sent by email and received on or before 4 pm local time of recipient, or (c) the next business day, as evidenced by email confirmation, if sent by email and received after 4 pm local time of recipient.

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**IN WITNESS WHEREOF**, the Guarantor has executed this  
Guaranty as of the day and year first above written

**[Guarantor name]**

By: \_\_\_\_\_  
Name:  
Title:



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Exhibit 7  
Form of Letter of Credit

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit No.: \_\_\_\_\_

Date: \_\_\_\_\_

Beneficiary:

[Duke Energy Carolinas, LLC][Duke Energy Progress, LLC]  
550 S. Tryon Street, DEC 40C  
Charlotte, North Carolina 28202  
Attn: Chief Risk Officer

Ladies and Gentlemen:

By the order of:

Applicant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

We hereby issue in your favor our irrevocable standby letter of credit No.: \_\_\_\_\_ for the account of \_\_\_\_\_ for an amount or amounts not to exceed \_\_\_\_\_ US Dollars in the aggregate (US\$ \_\_\_\_\_) available by your drafts at sight drawn on [Issuing Bank] effective \_\_\_\_\_ and expiring at our office on \_\_\_\_\_ (the “Expiration Date”).

The Expiration Date shall be deemed automatically extended without amendments for one year from the then current Expiration Date unless at least ninety (90) days prior to the then applicable Expiration Date, we notify you in writing by certified mail return receipt requested or overnight courier that we are not going to extend the Expiration Date. During said ninety (90) day period, this letter of credit shall remain in full force and effect

Funds under this letter of credit are available against your draft(s), in the form of attached Annex 1, mentioning our letter of credit number and presented at our office located at [Issuing Bank’s address must be in US] and accompanied by a certificate in the form of attached Annex 2 with appropriate blanks completed, purportedly signed by an authorized representative of the Beneficiary, on or before the Expiration Date in accordance with the terms and conditions of this letter of credit. Partial drawings under this letter of credit are permitted.

Certificates showing amounts in excess of amounts available under this letter of credit are acceptable, however, in no event will payment exceed the amount available to be drawn under this letter of credit.

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We engage with you that drafts drawn under and in conformity with the terms of this letter of credit will be duly honored on presentation if presented on or before the Expiration Date. Presentation at our office includes presentation in person, by certified, registered, or overnight mail.

Except as stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of [Issuing Bank] under this letter of credit is the individual obligation of [Issuing Bank] and is in no way contingent upon reimbursement with respect hereto.

This letter of credit is subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 (“ISP98”). Matters not addressed by ISP98 shall be governed by the laws of the state of New York.

We shall have a reasonable amount of time, not to exceed three (3) business days following the date of our receipt of drawing documents, to examine the documents and determine whether to take up or refuse the documents and to inform you accordingly.

Kindly address all communications with respect to this letter of credit to [Issuing Bank’s contact information], specifically referring to the number of this standby letter of credit.

All banking charges are for the account of the Applicant.

This letter of credit may not be amended, changed or modified without our express written consent and the consent of the Beneficiary.

This letter of credit is transferable, and we agree to consent to its transfer, subject to our standard terms of transfer and your payment to us of our standard transfer fee.

Very truly yours  
[Issuing Bank]

---

Authorized Signer

---

Authorized Signer

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This is an integral part of letter of credit number: *[irrevocable standby letter of credit number]*

ANNEX 1

FORM OF SIGHT DRAFT

[Insert date of sight draft]

To: *[Issuing Bank's name and address]*

For the value received, pay to the order of \_\_\_\_\_ by wire transfer of immediately available funds to the following account:

*[name of account]*

*[account number]*

*[name and address of bank at which account is maintained]*

*[aba number]*

*[reference]*

The following amount:

*[insert number of dollars in writing]* United States Dollars

(US\$ *[insert number of dollars in figures]*)

Drawn upon your irrevocable letter of credit No. *[irrevocable standby letter of credit number]*  
dated *[effective date]*

*[Beneficiary]*

By: \_\_\_\_\_

Title: \_\_\_\_\_

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This is an integral part of letter of credit number: *[irrevocable standby letter of credit number]*

ANNEX 2

FORM OF CERTIFICATE

[Insert date of certificate]

To: *[issuing bank's name and address]*

*[check appropriate draw condition]*

[ ] An Event of Default (as defined in the [Name of Agreement between [Beneficiary's Name] and [Insert Counterparty's Name] dated as of \_\_\_\_\_ (the “Agreement”)) has occurred with respect to [Counterparty's Name] and such Event of Default has not been cured within the applicable cure period, if any provided for in the Agreement.

Or

[ ] [Counterparty's Name] is required, pursuant to the terms of the Agreement, to maintain a letter of credit in favor of [Beneficiary's Name], has failed to renew or replace the Letter of Credit and the Letter of Credit has less than thirty (30) days until the expiration thereof.

*[Beneficiary]*

By: \_\_\_\_\_  
Title: \_\_\_\_\_

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Exhibit 8  
Acknowledgement of Non-Default

[Print Duke Energy letterhead]

Date:

Address of Seller

Re: Acknowledgement of Non-Default (the “Acknowledgement”) of the Power Purchase Agreement, between [Duke Energy Carolinas, LLC][Duke Energy Progress, LLC] (“Buyer”) and [insert Seller name] dated as of \_\_\_\_\_ (the “Agreement”).

Dear Sir or Madam:

The undersigned, a duly authorized representative of Buyer hereby acknowledges to Seller as follows:

1. The copy of the Agreement attached hereto as Exhibit A (including any amendments thereto) constitutes a true and complete copy of the Agreement;
2. Buyer has not transferred or assigned its interest in the Agreement; and
3. as of the date of this Acknowledgement based on the actual knowledge of Buyer’s personnel responsible for administering the Agreement after due inquiry of Buyer’s internal records only, there is no current Event of Default by Seller or Buyer under the Agreement, nor to Buyer’s knowledge, has any event or omission occurred which, with the giving of notice or the lapse of time or both, would constitute an Event of Default under the Agreement and the Agreement is in full force and effect.

Notwithstanding any provision to the contrary set forth herein, Buyer reserves all rights and defenses available to it under the Agreement and nothing stated herein shall be deemed to have waived, amended or modified any such rights or defenses.

Except as specified herein to the contrary, capitalized terms used in this Acknowledgement shall have the meaning ascribed to such terms in the Agreement.

Sincerely,

[Duke Energy Carolinas, LLC][Duke Energy Progress, LLC]

By: \_\_\_\_\_

Name:

Title:

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Exhibit 9

<b>Power Plant Controller Output Points</b>			
<b>Analog</b>	<b>Units of Measure</b>	<b>Accuracy</b>	<b>Notes</b>
Estimated Unit Active Power Operating High Limit		± 5 %	Estimated Generation currently possible given current equipment status, equipment characteristics, and current ambient conditions. Calculation based on site rating, percentage of inverters in service, POA irradiance, DC/AC ratio, ambient conditions, etc.
Estimated Unit Active Power Operating Low Limit		± 5 %	Estimated Minimum Generation currently possible given current equipment status, equipment characteristics, and current ambient conditions. Calculation based on site rating, percentage of inverters in service, POA irradiance, DC/AC ratio, ambient conditions, etc.
Air Temperature	Degrees Celsius	± 1°	
Back Panel Temperature	Degrees Celsius	± 1°	Temperature sensor mounted behind a solar photovoltaic panel.
Plane Of Array Irradiance- Primary Meter	Watts/Meter Sq.	± 25 W/m <sup>2</sup>	Measured with a Class II pyranometer or equivalent equipment. For fixed-tilt sites, the sensor shall be mounted on a meteorological station facing the same angle and direction as the solar photovoltaic panels at the site. For tracking sites, the sensor shall be mounted on tracker to be oriented at the same angle and direction as the solar photovoltaic panels at the site.
Plane Of Array Irradiance- Secondary Meter	Watts/Meter Sq.	± 25 W/m <sup>2</sup>	Measured with a Class II pyranometer or equivalent equipment. For fixed-tilt sites, the sensor shall be mounted on a meteorological station facing the same angle and direction as the solar photovoltaic panels at the site. For tracking sites, the sensor shall be mounted on tracker to be oriented at the same angle and direction as the solar photovoltaic panels at the site.
Global Horizontal Irradiance	Watts/Meter Sq.	± 25 W/m <sup>2</sup>	Measured with a Class II pyranometer or equivalent equipment. The sensor shall be mounted on a metrological station set at the global horizontal angle of the earth in reference to the sun solar radiation.
Global Horizontal Diffuse Irradiance	Watts/Meter Sq.	± 25 W/m <sup>2</sup>	Measured with a Class II pyranometer or equivalent equipment. All Solar irradiance coming from the sky and other reflected surfaces except for solar radiation coming directly from the sun and the circumsolar

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			irradiance within approximately three degrees of the sun. Global diffuse irradiance sensors follow the same accuracy and mounting requirements as the GHI sensors but shall be designed to measure diffused irradiance.
Direct Irradiance (Optional)	Watts/Meter Sq.	± 25 W/m <sup>2</sup>	Measured with a Class II pyranometer or equivalent equipment. Solar irradiance arriving at the earth's surface from the sun's direct beam, on a plane perpendicular to the beam and is typically measured on a solar tracker.
Number of Inverters in Ready Status			Sum of the Number of inverters currently in service. Can be a decimal if one or more inverters are partially available.
<b>Digital</b>	<b>Status</b>	<b>Accuracy</b>	<b>Notes</b>
Active Power Dispatch Event	ON/OFF		ON indicates the resource is currently being dispatched to the Active Power Automatic Generation Control Setpoint.
Plane Of Array Irradiance- Primary Meter Status	ON/OFF		Communications Online Offline Status
Plane Of Array Irradiance- Secondary Meter Status	ON/OFF		Communications Online Offline Status

**For Facilities equipped with DC tied, behind a solar inverter, Storage Resources the following Power Plant Controller Output Points shall also be reported to Buyer<sup>1</sup>**

<b>Analog</b>	<b>Units of Measure</b>	<b>Accuracy</b>	<b>Notes</b>
Unit Net MW			The resource's real power output measured at the low side of the step-up transformer.
Unit Gross MW			The resource's real power output before subtracting the auxiliary real power load or step-up transformer real power losses.
Unit Auxiliary MW			The resource's real power load the generating unit provides to maintain its station service power.
Storage Device Active Power Operating (Discharging) High Limit	+MWs		Storage Device's Active Power Operating High Limit given current equipment status, equipment characteristics, and current ambient conditions.
Storage Device Active Power Operating (Charging) Low Limit	-MWs		Storage Device's Active Power Operating Low Limit given current equipment status, equipment characteristics, and current ambient conditions.

<sup>1</sup> For non-DC tied, behind a solar inverter, Storage Resources Buyer may require additional Power Plant Controller Output Points to be reported upon reasonable notice to Seller.

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Number of Storage Device DC-DC Converters in Ready Status			Sum of the Number of DC-DC Converters currently in service. Can be a decimal if one or more DC-DC Converters are partially available.
Allowable Depth of Discharge	MWh		MWh energy storage potential, considering OEM recommendations and any emergent operating limitations, at a given point in time.
State of Charge			<p>Percentage of the Allowable Depth of Discharge currently charged within the storage device.</p> <p>Example: A nameplate rated 10 MWh storage device is currently allowed to store energy up to 80% of its nameplate rating and down to 20% of its nameplate rating. The storage device currently has 4 MWhs stored in the device.</p> <p>The Allowable Depth of Discharge is 10 MWh * 80% - 10 MWh * 20% = 6 MWh</p> <p>The State of Charge = 4 MWh / 6 MWh = 66.66%</p>
Max MWh Charge			Maximum amount of energy currently allowed to be stored in the energy device given current equipment status, equipment characteristics, and current ambient conditions.
Min MWh Charge			Minimum amount of energy currently allowed to be stored in the energy device given current equipment status, equipment characteristics, and current ambient conditions.
Bulk Discharge Window Start Timestamp			The Timestamp of the start of the next Bulk Discharge Window.
Bulk Discharge Window End Timestamp			The Timestamp of the end of the next Bulk Discharge Window.
Bulk Discharge Window Active Power Setpoint			Active Power Setpoint for the current or next Bulk Discharge window taking into account the storage device's current State of Charge and Allowable Depth of Discharge.
Digital	Status	Accuracy	Notes
Storage Device Breaker Status	OPEN/CLOSED		Indicates whether a the Unit Generator Breaker is Open or Closed.

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**Exhibit 10**  
**Energy Storage Protocol**

1. The Storage Resource must be on the DC side of the inverter and charged exclusively by the Facility.
2. The Storage Resource will be controlled by the Seller, within operational limitations described below.
3. The maximum output of the Facility, including any storage capability, at any given time shall be limited to the Facility’s Nameplate Capacity as specified in the Agreement.
4. The discharge of stored energy is not permitted while the Facility has received or is subject to a curtailment instruction (i.e., System Operator Instruction) from the system operator if such discharge would cause the total output of the Facility to exceed the level permitted by the System Operator Instruction.
5. Ramp rates for Storage Resource shall not exceed 10 percent of the Storage Resource’s capacity (MW) on a per minute basis, up or down, unless the Storage Resource is ramping to mitigate solar volatility, in which case the ramp rate limitation does not apply.
6. Scheduling for capturing peak pricing periods and other storage limitations:
  - a. Note: Scheduling criteria below are not intended to preclude the ability of the Seller to use the storage device primarily to smooth facility output and thereby qualify for the SISC Credit in lieu of maximizing discharge during Capacity Hour or peak pricing windows.
  - b. For all (winter and summer) months/days with discrete capacity rate hour window periods (“Capacity Hour Window”), the Seller shall distribute any intended energy storage discharge of the storage device in a manner that levelizes (holds constant), on an expected basis, the total output of the Facility at the highest practical level over the duration of each specific Capacity Hour Window selected by the Seller for energy storage discharge of such calendar day, except as limited by ramp rate criteria, inverter capability, availability, state of charge and the Facility’s Nameplate Capacity as specified in the Agreement. For clarity, total output of the Facility is not required to be held at the same level across both morning and evening Capacity Hour Windows during winter months. The Seller may, at its discretion, elect to discharge storage across either or both winter morning and evening Capacity Hour Windows, provided that the intended energy storage discharge for each Capacity Hour Window is distributed in a way that holds total Facility output constant across the respective Capacity Hour Window.
    - i. For any storage discharge occurring on weekends and holidays where only Off-Peak energy rates apply, the Seller shall be permitted to distribute discharge (if any) of the storage device across hours selected by Seller, except as limited by ramp rate criteria, inverter capability, availability, state of charge and the Facility’s Nameplate Capacity as specified in the Agreement..

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- c. For the remaining (shoulder) months without Capacity Hour windows, the Seller shall be permitted to distribute discharge (if any) of the storage device across hours selected by Seller, except as limited by ramp rate criteria, inverter capability, availability, state of charge and the Facility’s Nameplate Capacity as specified in the Agreement.
7. Buyer reserves the right to add or modify operating restrictions specified in these Energy Storage Protocols to the extent necessary to comply with NERC Standards as such standards may be modified from time to time during the Term. Any such modification shall be implemented by Buyer in a Commercially Reasonable Manner and shall be applied to the Facility and Buyer’s own generating assets on a non-discriminatory basis. If Seller can make a commercially reasonable demonstration to Buyer, which is approved by Buyer in its reasonable discretion, that the Facility does not contribute to potential NERC compliance violations for which the modifications have been implemented, then such modifications shall not apply to the Facility.
8. If identification of Capacity Hours changes over the course of the term of the Agreement, Seller will make Commercially Reasonable Efforts to work with Buyer to adjust the hours of charging/discharging to coincide with these updated hours. However, Seller shall not be obligated to do so in a way that compromises their original economic value contemplated for storage resource.
9. Seller will only be compensated for Energy and Capacity actually provided to Buyer in accordance with the terms of the Agreement.

Notes:

Other capitalized terms used in this Exhibit which have not been defined herein shall have the meaning ascribed to such terms in the Agreement to which this exhibit is attached.



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Exhibit 11  
Form of Surety Bond

**SURETY BOND OF PAYMENT AND PERFORMANCE (the “Bond”)**

\* \* \* \* \*

---

***PRINCIPAL*** (Legal Name and Business Address)

<b><i>SURETY</i></b> (Legal Name and Business Address)	<b><i>SURETY BOND EFFECTIVE DATE</i></b>
<b><i>OBLIGEE</i></b> [Duke Energy Carolinas, LLC] [Duke Energy Progress, LLC] Attn: Credit Risk Manager 550 South Tryon Street (DEC41Q) Charlotte, NC 28202	<b><i>SURETY BOND INITIAL EXPIRATION DATE</i></b>
<b><i>SECURITY AMOUNT</i></b>	<b><i>PENAL SUM OF BOND</i></b>

**KNOW ALL PERSONS BY THESE PRESENTS THAT:** Principal and Surety are jointly and severally held and firmly bound to [Duke Energy Carolinas, LLC] [Duke Energy Progress, LLC] (“Duke Energy” or “Obligee”), a limited liability company organized and existing under the laws of the state of North Carolina, its successors and assigns in the amount of \$[insert Bond Amount] (“Bond Amount” or “Penal Sum of Bond”), for the payment of which the Principal and Surety, their heirs, executors, administrators, successors and assigns are hereby jointly and severally bound. Hereinafter Surety, Principal and Duke Energy may be individually referred to as a “Party” and collectively as the “Parties.”

**RECITALS**

**WHEREAS,** Principal and Duke Energy have entered into that certain [Power Purchase Agreement], dated as of \_\_\_\_\_, 20\_\_\_\_\_, (hereinafter, the “Agreement”);

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**WHEREAS**, Principal is proposing to develop a [describe generating facility] (the “Facility”) located in \_\_\_\_\_ County, [insert state], at [insert address], as further identified in the Agreement; and

**WHEREAS**, Duke Energy has required that Principal deliver this Bond to Duke Energy as a material inducement to enter into the Agreement.

**NOW THEREFORE**, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the terms and conditions of this obligation are as follows, that if Principal, shall fully and faithfully pay and perform its obligations under the Agreement according to the terms, stipulations or conditions thereof, then this Bond shall become null and void, otherwise to remain in full force and effect and be performed and enforceable in accordance with its terms. This Bond is executed by the Principal and Surety and accepted by Duke Energy on and subject to the following express terms and conditions:

1. Capitalized terms undefined herein will take the meaning or definition provided in the Agreement. In the event of any conflict between this Bond and the Agreement, the terms of this Bond will control.
2. Surety absolutely and unconditionally guarantees the timely payment of Principal’s payment obligations under the Agreement when due (the “Obligations”) in accordance with the terms of the Agreement and this Bond.
3. Surety shall honor Duke Energy’s request for payment under this Bond upon presentation by Duke Energy of a demand for payment in accordance with the terms of this Bond (“Demand for Payment”) which includes one or more of the following certifications by Duke Energy with appropriate blanks completed:
  - a. Duke Energy [Carolinas][Progress], LLC (“Duke Energy”) hereby certifies that the amount of US\$ \_\_\_\_\_ is due and owing and remains unpaid (beyond the time allowed for such payment, including following any related notice or grace period or both) to Duke Energy by [Principal’s name] in accordance with the terms and provisions of [insert name of power purchase agreement] dated as of [insert date], by and between Duke Energy and [insert Principal’s name] (the “Agreement”) and Duke Energy hereby demands payment in the amount of [insert amount up to the full Bond Amount];
  - or
  - b. Duke Energy [Carolinas][Progress], LLC (“Duke Energy”) hereby certifies that an event of Default, as defined in the [insert name of power purchase agreement] dated

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as of [insert date], by and between Duke Energy and [insert Principal’s name] (the “Agreement”) has occurred with respect to [insert Principal’s name] and such event of Default has not been cured within the applicable cure period, if any provided for in the Agreement and pursuant to the terms of the Agreement, Duke Energy is entitled to the funds requested herein. Based on the foregoing, Duke Energy hereby demands payment in the amount of [*insert amount up to the full Bond Amount*];

Or

- c. [insert Principal’s name] is required, pursuant to the terms of the [Insert name of Agreement] dated as of [insert date], by and between Duke Energy [Carolinas][Progress], LLC (“Duke Energy”) and [insert Principal’s name] (the “Agreement”), to maintain a financial security in favor of Duke Energy, has failed to renew or replace this Bond and the Bond has less than sixty (60) days until the expiration thereof and based on the foregoing, Duke Energy hereby demands payment in the amount of [*insert amount up to the full Bond Amount*] which shall be held by Duke Energy as financial security in accordance with the terms of the Agreement.
4. Surety will, not later than five (5) days after delivery of a Demand for Payment to the Surety at the address provided below, pay the Bond Amount to Duke Energy.
5. Duke Energy’s right to recover the Bond Amount will in no way limit its entitlement to other remedies to which Duke Energy may be entitled pursuant to the terms of the Agreement or applicable law.
6. It is hereby agreed that this Bond is effective beginning on the Surety Bond Effective Date, above and shall remain in effect for an initial term of [insert initial term] (the “Expiration Date”) The Expiration Date shall be deemed automatically extended without amendments for successive one year periods commencing on the then current Expiration Date unless at least ninety (90) days prior to the then applicable Expiration Date, Surety notifies Duke Energy in writing by certified mail return receipt requested or overnight courier that Surety has elected to not extend the Expiration Date of the Bond. During said ninety (90) day period, this Bond shall remain in full force and effect.
7. Notices. Any communication, demand or notice to be given hereunder will be duly given when delivered in writing to a Party at its address as indicated below:

If to Surety:

{Add notice info}

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If to Duke Energy:

[Duke Energy Carolinas, LLC] [Duke Energy Progress, LLC]

Attn: Credit Risk Manager

550 South Tryon Street (DEC41Q)

Charlotte, NC 28202

If to Principal:

{Add notice info}

8. The Surety's liability under this Bond is limited to the Bond Amount plus enforcement costs (if any) required under Section 11 below.
9. The Surety hereby waives notice of any and all modifications, omissions, additions, changes, alterations, extensions of time, changes in payment terms, and any other amendments in or about the Agreement agreed to between Principal and Duke Energy, and agrees that the obligations undertaken by this Bond shall not be impaired in any manner by reason of any such modifications, omissions, additions, changes, alterations, extensions of time, change in payment terms, or amendments. Any bankruptcy or insolvency of Principal or any related discharge, release or cessation of any liability of Principal shall not affect Surety's obligations hereunder. Except for any notice expressly required under the terms hereof, Surety waives all presentments, demands for performance, notices of non-performance, notices of breach or waiver, rights of subrogation (until such time as the Agreement and/or this Bond shall have been indefeasibly paid and performed in full), protests, notices of protest, notices of default or dishonor, notices of acceptance of this Bond and any requirement that Duke Energy bring or pursue any action against Principal and any right to demand collateral or security.
10. If any part or provision of this Bond will be declared unenforceable or invalid by a court of competent jurisdiction, such determination in no way will affect the validity or enforceability of the other parts or provisions of this Bond.
11. The Surety agrees to pay all reasonable out-of-pocket expenses (including the reasonable fees and expenses of Duke Energy's counsel) relating to the enforcement of Duke Energy's rights hereunder in the event the Surety disputes its obligations under this Bond and it is finally determined (whether through settlement, arbitration or adjudication, including the exhaustion of all permitted appeals), that Duke Energy is entitled to receive payment of a portion of or all of such disputed amounts.
12. TO THE FULLEST EXTENT PERMITTED BY LAW, DUKE ENERGY, PRINCIPAL, AND SURETY WAIVE ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY ARISING OUT OF THIS BOND.
13. DUKE ENERGY, PRINCIPAL, AND SURETY SUBMIT TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN MECKLENBURG COUNTY NORTH CAROLINA FOR PURPOSES OF ALL LITIGATION DIRECTLY ARISING

OUT OF THIS BOND. EACH OF THE AFOREMENTIONED PARTIES HEREBY IRREVOCABLY: (i) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH LITIGATION IN SUCH A COURT; AND (ii) WAIVES ANY CLAIM THAT ANY LITIGATION BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

14. DUKE ENERGY, PRINCIPAL, AND SURETY AGREE THAT THE TERMS AND ENFORCEMENT OF THIS BOND SHALL BE GOVERNED, CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICTS OF LAWS PRINCIPLES OF THAT STATE OR ANY OTHER STATE OR JURISDICTION.
15. The undersigned Surety agent(s) represent that he/she is a true and lawful attorney-in-fact for the Surety and authorized to bind the Surety hereto and to affix the Surety's corporate seal hereunder, as evidenced by the attached power of attorney.



“Public (Redacted) Version”  
EXECUTION COPY – SUNFLOWER

**IN WITNESS WHEREOF**, this instrument is SIGNED AND SEALED this \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

**PRINCIPAL:**

Signature: \_\_\_\_\_

(SEAL)

Name and Title: \_\_\_\_\_

**SURETY:**

Attorney in Fact: \_\_\_\_\_

Signature: \_\_\_\_\_

(SEAL)

Name and Title: \_\_\_\_\_

**AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I hereby certify that I am the attorney-in-fact of \_\_\_\_\_, a [*insert entity type*], which is the surety in the foregoing bond, and that I am authorized to execute on the above Surety’s behalf the foregoing bond pursuant to the Power of Attorney dated \_\_\_\_\_ and attached hereto, and on behalf of the Surety, acknowledge the foregoing bond before me as the above Surety’s act and deed.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
*ATTORNEY-IN-FACT*

\_\_\_\_\_  
*PRINT NAME*

(NOTARY SEAL)

